

Minutes of the Commission Meeting of the Board of Commissioners, Carbon County, State of Utah, held November 18, 2015 at the Courthouse Building, Price, Utah, commencing at 4:30 p.m.

Those present: Jake Mellor, Commission Chair
Jae Potter, Commissioner
Casey Hopes, Commissioner

Also present: Seth Oveson, Clerk/Auditor
Lori Perez, Deputy Clerk
Sandy Lehman, Commission Secretary
Jeff Wood, Sheriff
Christian Bryner, Attorney
Rose Barnes, HR

Clerk's Certificate of Compliance with Open Meeting Law was filed.

Commissioner Mellor welcomed everyone. The meeting began at 4:30 p.m.

1) Opening Flag Ceremony by Local Boy Scout Troop

Doug Laursen from a local Boy Scout Troop led the Pledge of Allegiance.

2) Carbon County Employee of the Month Recognition – Rose Barnes

Assessor Julie Medley nominated Denise Knowlden and Sulika Merrill as Employees of the Month. Julie said Denise and Sulika should be acknowledged for their work involved in reappraising Helper City. They implemented a new way to pull up the needed data using GIS on tablets. She appreciates their hard work and their attention to details.

3) Approval of Minutes

Commissioner Potter made a motion to approve the October 7, 2015 Work Meeting minutes. Commissioner Hopes seconded. Motion carried

Commissioner Potter made the following correction for the October 7, 2015 Commissioner Meeting: on page 5, half way down, the \$510,000 is not a County estimate and he would like Nielson Construction recognized as providing the estimate. Commissioner Hopes made a motion to approve the minutes with the correction, Commissioner Potter seconded. Motion carried.

Commissioner Potter made a motion to approve the October 20, 2015 Commission Meeting minutes, Commissioner Hopes seconded. Motion carried.

4) Open sealed bids for 1 year supply of replacement tires for road and landfill operations – Daniel Campbell, County Road Department

Commissioner Hopes asked to not open the bids today because questions from local contractors need to be clarified. He would like this item rebid and leave the bids received today sealed. Seth said the new bid notice has been written and the bid received can be held until December 2.

Christian asked if the new bid notice had been published. Sandy said not yet, but it could be in Tuesday's paper. Christian asked if the new bid proposal notice had solved the issues. Seth asked that Christian review the new bid proposal before it is published. It would need to be submitted by Friday in order to be in Tuesday's paper and ready for the December 2nd Commission Meeting.

Commissioner Hopes made a motion to postpone the bid opening and rebid the tire contracts for the road and landfill operations. He amended his motion to acknowledge the one bid received, leave it sealed and redo the bid process with a new notice. Commissioner Potter seconded. Motion carried.

5) Hope Squad Presentation

Debbie Marvidakis from the Southeastern Utah Health Department also chairs the Hope Squad for Carbon and Emery Counties for suicide prevention. She and her committee are here today to present an award to Officers Travis Henrie, Brandon Sicilia and Mike Hreinson who prevented a potential suicide. Debbie said these officers

are modest and humble and did not want the recognition. What they did is a very big deal. When you take the time to save a life, to prevent a suicide, you also help the community because suicide affects all. It takes a team, a community, to save a life. Terri read the plaque being presented. The Hope Squad is honored and grateful to provide these awards. The officers were thanked by all.

6) **Eagle Scout Project Proposal – Doug Laursen**

For his Eagle Scout Project, Doug Laursen would like to put practice walls in at the tennis courts. He explained statistics for usage of back boards. He would like to purchase 8x12 flat surface back boards and 8x12 curved back board for the wall. The price for both is \$4,632.00. He has talked to Carbon School District and they are willing to donate \$1,500. He is asking for a donation of \$1,000.

Commissioner Hopes asked if he had talked to Price City. Doug said Price City has offered to pay for the rest after other donations are received.

Commissioner Potter asked if he had talked to anyone else about donations. Doug said only the school board and the tennis coach. Commissioner Mellor said the Kiwanis are looking for Eagle Scout projects to support. He encouraged Doug to contact Kiwanis board members for additional help.

Commissioner Hopes said the tennis courts were built collaboratively by the School District, Price City and the Recreation and Transportation Special Service District. Commissioner Hopes would like Doug to approach Rec and Trans SSD and is willing to go with him to that board meeting and ask them for the \$1,000 as part of the County's donation.

Commissioner Potter asked if Doug had a timeline for the project. Doug said there is no time limit. Commissioner Hopes said the next Rec and Trans SSD meeting is on December 7th at 3:00 p.m. Commissioner Hopes will put the request on the agenda and he will go with Doug to the meeting.

7) **Request for donation to EC Learning and Resource Center – Richard Lee**

Commissioner Potter motioned to table items 7 and 8. Richard and Harvey are unable to attend. Commissioner Hopes seconded. Motion carried.

8) **Discussion concerning tourism – Harvey Howard, Desert Thunder Raceway**

Commissioner Potter included item 8 in the above motion.

9) **Review and possible approval of Contract Amendment with the State of Utah for CJC – Shelley Wright**

Colleen Milchak presented for Shelley Wright. She needs approval of an amendment to a contract approved in June for rollover money.

Commissioner Potter said this is a standard state contract that helps to fund the Children's Justice Center every year. Colleen said the contract was approved for \$109,355 and they are adding \$11,138, they were short staffed last year and this is why they have rollover money. The total for the contract is \$120,493.

Commissioner Hopes made a motion to approve the amended contract. Commissioner Potter seconded. Motion carried.

10) **Review and possible approval of the Fiscal Year 2015 State Homeland Security Project (SHSP) Grant – Whitney Waterfall**

Whitney said this is the State Homeland Security Project grant it was changed from a two year cycle to a three year cycle and will not need to be submitted again until 2018. There is no local match, it is a shared grant with Emery County and is for \$225,000, our portion being \$123,000.

Commissioner Potter asked if we are still using the Castle Dale address as the recipient address. Whitney said yes they are the current representative for our region and every three years it rotates. Region 6 is also correct.

Commissioner Potter asked about Articles of Agreement #3, the physical year end is December through June and Zac Palacios is the contact. Whitney said December 2015 to June 30 is the grant cycle.

Commissioner Mellor clarified that this is a straight up grant with no match required. Whitney said this is the largest grant they receive except for the pre-disaster mitigation grants.

Commissioner Hopes made a motion to approve the State Homeland Security Project grant, Commissioner Potter seconded. Motion carried.

11) Report on Six County Coalition Infrastructure – Senator Okerlund

This item was moved to the end of the meeting to allow Senator Okerlund more time to arrive. He had not shown up by the end of the meeting.

12) Public Hearing to consider and possibly approve a recommendation from the Planning Commission for a Conditional Use Permit for Verizon Wireless to construct two cellular facilities located on parcel #02-1525-0003 at 1989 Airport Rd and on parcel 02-1716-8 at 175 E. 2750 S.

Jared White said the two tower sites are on opposite ends of the city. The major issue for cell phone carriers is the capacity of the network; single sites no longer have enough capacity for smart phones. These new sites will enhance coverage in the area and increase the capacity of the existing sites. This will help the network throughout the entire area of Price to meet the demands. New sites are only built on advanced calling features on new phones; it will not help or hinder old phone service.

Commissioner Potter asked if the site going in near Wellington will help alleviate the dead spots in that area. Jared said it will help improve the area by making the current site function better by offloading the demand on it.

Commissioner Hopes asked where this site is in relation to the airport. Jared explained that all cell sites, in addition to approval from the County Commission, have to be registered with the FAA and FCC and receive approval based on height standards. This site is behind the animal hospital in the valley. They will run all of the required FAA and FCC studies before building.

Commissioner Mellor opened the public hearing at 5:02 p.m.
Seeing no response the public hearing was closed at 5:03 p.m.

Commissioner Potter made a motion to approve the conditional use permit to construct two cellular towers, Commissioner Hopes seconded. Motion carried.

13) Public Hearing to consider and possibly approve a recommendation from the Planning Commission for a Conditional Use Permit for Jerry Carlson to construct a dwelling on parcel 2A-0818-1, in the Beaver Creek area.

Steve Hillam representing Jerry Carlson is asking for permission to build a cabin on parcel 2A-0818-1. This parcel is 455 acres and the minimum required for building is 40 acres.

Commissioner Mellor opened the public hearing at 5:04 p.m.
Seeing no response the public hearing was closed at 5:05 p.m.

Commissioner Hopes made a motion to approve the conditional use permit, Commissioner Potter seconded. Motion carried.

14) Public Hearing to consider all written protests filed and to hear all comments and objections relating to proposed improvements to a roadway which includes pavement of the Hilltop Road from the end of the current pavement around West Gordon Creek Road to the end of Hilltop Road and also regarding the creation of a Special Tax Assessment Area to be known as Carbon County, Utah Special Tax Assessment Area No. 2015-1 (Hill Subdivision).

Neil Breinholt spoke on behalf of the Hill Subdivision Homeowners Association. Neil shared some additional documents. The overall road alignment has been surveyed by Johansen and Tuttle, showing that the road is substantially where it is supposed to be. On the entrance to the subdivision, the Wise property and the Gagon property are not aligned correctly for the road and an easement would be required.

The bond attorney said that a legislative change last year allows for a 60% agreement in favor of the project and a 40% in opposition. It had previously been 70% and 30% and Neil had this clarified.

Christian said tonight is not the night to count protests of the project and the public hearing will still be held. Christian read that by law "an owner of the property that is purposed to be assessed who does not want the property to be included in the assessment period may in 60 days after the day of the hearing described, (subsection 1142-204) may file a written protest." Christian explained that the protest period extends 60 days. The notice sent out said the protests were to be counted tonight but in fact that is not correct. Sixty days have to be granted from the day of the hearing for those protests. The hearing can go forward tonight regardless of how many protests were turned in. The Commission can read the protests into the meeting but it will not be the last night to file them.

Neil said they went ahead and had three tests done on the road by Johansen and Tuttle. Commissioner Mellor asked Curtis if he had read the new information from Neil. Curtis said he received it this afternoon and has not had time to go through it.

Commissioner Mellor opened the public hearing at 5:12 p.m.

Dr. John Boyle said he was the first builder on the hill and moved in in 2001. The road has been gravel since 2003. The Home Owners Association has managed to maintain the road every year. There have been changes to the road including the road being lowered a little bit over the past few years as it has been worked on. Since this happened, some of the water from the Wise property is now spilling down the south side of the road and creating a ditch. The grade would have to be raised to correct this and the ditch removed. Curtis said there is a head cut that is occurring adjacent to the road. John is interested in what was found in the nine test holes.

Curtis said the results of the test holes can be made available. He did send it to the Homeowner Association in 2012 as an email. The test holes were for observation only, no samples or density was collected. Test pit #9 only had a half of foot of material and how far that reaches is unknown.

John asked Christian about the structure of the bond. John thought it was proposed for ten years and then the road becomes county property and would be responsible for maintenance. John's main concern is what is best for the subdivision. He is concerned about the bottom of the hill that flooded during the fall. Most of the water was coming off of the Gagon/Wise property. He feels that the Gagon's have not mitigated the water coming off of their property. He explained the history. He feels that the road is not ready to be turned over for paving.

Commissioner Potter asked about the area at the base of the hill and if it is included in the HOA deeded part of the road. John said this would have to be cleared with Dick Lee. John said you can see where mud is coming off of the hill and covering up some of the existing paved road.

Dr. Boyle's letter states that he is opposed to the assessment for the road until he can see a plan where the water is mitigated and he would like this made a condition on the contract before it is approved and accepted.

Curtis Page is also concerned with the drainage and in the report he wrote in July 2012, he read: "one of the most important elements of a well-designed road is adequate drainage. Hill Top road has a number of culverts throughout the length of the road. In some locations road side drainage is not very well defined and there is evidence of ponding and locations where drainage crosses the road. The ability to accept control and convey tributary runoff away from the road is imperative. The topography in the area is relatively flat and the watershed is significant. The applicant will need to have a licensed civil engineer evaluate the drainage needs for this road."

Aaron Howell moved to the Hill Subdivision in 2000. He has seen the road develop from jeep trail. He feels that part of the proposal should include a professional engineer to design the road that is acceptable to the County. He does support the improvement of the road, he feels it is necessary. There have been difficulties with the home owners association documents because being a member of the HOA is not mandatory and some property owners have not participated. He feels that it does need to be an assessment area, with shared costs so that everyone can have a good road to their home.

Jeff Richens, the district manager for Price River Water Improvement District, does not live in the subdivision. The district does not own a parcel on the hill but does own a pump station in the area that feeds the upper sixteen lots. They are required by the Division of Drinking Water to insure that run off does not flood the pump station. They hope that engineering takes that into consideration. The main water line that goes up on the north side of the road requires an easement from the property owners. The agreement states that pavement will not go over the top of the waterline. PRWID is asking for an adequate buffer between the edge of the asphalt and the location of the waterline so that it doesn't raise the cost of maintenance.

Jeff asked for clarification of ownership and when that begins. Christian's understanding is that the County would take responsibility immediately and then assess the property owners. The attorney representing the County is Eric Johnson. Christian will check on which attorney would be in charge and who PRWID would call if a water line had to be dug up. He is fairly certain it would be the County. The location of the waterline would need to be re-identified.

Gina Gagon, is a resident in the subdivision. She is in support of the road; it is very much needed for the reasons discussed including drainage. She is happy to answer any questions regarding John Boyle's comments. Commissioner Mellor asked if she was aware of a run off problem from her property. She stated that this past year they did pave their driveway which may have increased the run off from prior years when it was dirt. She feels that to say that her property is causing the problem with the road is not accurate. This is something that can be answered by an engineer.

Tim Byers, lives on the hill and owns additional undeveloped property in the subdivision. He is in favor of the road and thinks it will be great for the residents. It will make the sale of property easier, increase the tax base for the County and increase the value of the homes. It would be more convenient and benefit the County in general. Anyone who buys property hopes that over time it will improve.

Dr. Byers owns about 20 acres that are part of the subdivision and are not developed. They are along the road and his house is at the end of the road. Commissioner Hopes asked if the utilities have the capacity for further development. Tim said there is electricity and he has one water hook up and is in the process of purchasing another connection. He is not interested in developing the property but would like to divide it into two.

Dr. Scott Justesen is building a home on the hill and he supports the road. His concern would be the road washing away coming off of the hill. Snow and ice makes the cracks and furrows worse and are becoming a safety issue. They are now three to four feet deep. The proposal would need to address this. Road maintenance after paving will insure the ice and snow removal and increase safety.

Commissioner Mellor asked if the safety issues affected his decision to build on the hill. Scott said that purchasing the lot came with the idea that a road would go in and the homeowners would need to pay for the road. He was on board for that improvement.

Neil Breinholt said they have gone through the process to be here. They have used their own funds to build and maintain the road. In the past, John Boyle and Neil were asked by the Homeowners Association to find a way to share the cost of road improvements so that everyone was treated fairly, participated and received benefits. They went to Attorney Mike Jensen and he found the state statute that allows for the assessment and he recommended this solution. This has led them to this point. They wanted to make sure they knew what they were talking about. They received a preliminary estimate of \$400,000 which included costs for drainage, engineering, pavement, and raising the elevations. They took this to their Homeowners meetings and had support. When the County was approached, the County did not think it was enough money. So Neil got another proposal from a construction company that was slightly higher and they learned more about the drainage. Whether the road is paved or not, the road will still need to be fixed. Neil further explained the proposal and asked Nielson Construction to explain how they came up with the costs.

Blake Rasmussen, Nielson Construction, explained that they have been working with Neil for a while to come up with a cost. They came up with a plan that would mitigate the issues and stabilize the roadway. It would employ filter fabric underneath the riprap lined ditch with riprap check dams to help control the erosion and stabilize the road. They did add numbers to the budgetary proposal for additional gravel where needed. Neil asked if Nielson Construction were still comfortable with their estimate. Blake said they based their numbers off of the Class B Subdivision Road code design. They will honor their anticipated numbers. Commissioner Mellor asked if their estimate includes anything added by engineering. Blake said if the design changed they would reserve the right to change their estimate.

Christian asked if an estimate had been submitted to the Commissioners. The estimate for \$440,916 includes \$25,000 for engineering. Johansen & Tuttle did the testing and surveyed for the potential drainage issues and have issued a letter stating that the original estimate will be sufficient for surveying and testing costs on the existing road until completion. The construction and engineering costs are tied down, if there are changes the \$510,000 bond amount exceeds all of the estimates but gives a potential for a 20% variance. All of these things have been considered and have accumulated to this point. The detail for the road was received today and given to Curtis and the Commissioners.

Christian asked if the Johansen & Tuttle estimate is the same estimate provided by Nielson Construction. Neil said it is. Neil said there is a \$25,000 breakout in Nielson Construction's proposal and Johansen & Tuttle said it is sufficient to construct the road. Christian asked if another estimate is going to be coming from Nielson Construction or are Nielson's numbers in Johansen & Tuttle's report. Blake said Johansen & Tuttle's services for the construction project are included in Nielson's estimate.

Christian asked if Nielson's estimate has been provided yet. Blake said there is no design estimate to provide. Curtis said the estimate is a Nielson Construction estimate and not from Johansen & Tuttle. Neil said Johansen & Tuttle reviewed the estimate and they are comfortable with it and have provided a letter of guarantee. Curtis asked what Johansen & Tuttle looked at. Neil said he had them look for serious drainage problems. They first needed to see where the road would be, so when they were doing the survey for the road they looked at the drainage and they feel comfortable with what they saw. If changes are needed for drainage it will not be significant enough for them to red flag the project or change the estimates. Curtis asked about a hydrology study. They have not completed a hydrology study but know it is part of the package.

Commissioner Potter asked what would be the width of the road. Blake said it is based on the County plat and it would need to be double checked.

Commissioner Potter said the quit claim deed is a thirty-six foot right of way and needs to be fourteen feet wider but not on the north side of the road according to PRWID. Neil said this has been discussed and everyone who voted in favor understands that it will be from their property. Commissioner Potter asked if the people on the south side of the road are willing to give the fourteen feet. Neil said this is the first time this has been brought up. He knows that the property owners are in favor of the road and he doesn't believe an easement will change that. Commissioner Potter said the same issue applies with the realignment of the road.

Christian said it would have to be more than an easement; the County would need to own it. Commissioner Potter concurred.

Neil said there have been many meetings over many years. Everyone treats each other well, they like living there, they like their neighbors and the overwhelming vote is that this needs to take place and he hopes they can work with the County and make it happen. They are willing to work with the Commission over the next sixty days to mitigate any questions.

Commissioner Potter read into the record the persons who submitted letters in opposition:

John and Nancy Boyle who are opposed

James and Billene Henrie who are opposed

Opal Wise who is opposed

A letter was received from Lowdermilk clarifying exemption of the Lowdermilk properties from any assessment or development because of the HOA agreement.

Neil explained the situation with the Lowdermilk property clause which exempts these properties from the assessment. The assessment would include seventeen properties and does not include Lowdermilk and the PRWID pump station.

Commissioner Potter said the width of road is also not included and the subdivision would have to be re-platted and resurveyed. Neil said that is why they included extra money.

Commissioner Potter asked Christian what direction needs to happen next. Christian said he is concerned that everything has not been reviewed. The documents received this afternoon need to be reviewed. There are also questions about the right of way and width of the road. He doesn't feel that a decision can be made tonight. He recommends holding the public meeting open and not close it tonight and allow additional information to be gathered and then set a date tonight to continue the public meeting. Christian's questions are: is there a willingness to provide sufficient right of way width, is the engineering work sufficient, and is our County engineer willing to concur with the recommendations given. Christian would like answers to these questions and they ought to be provided to the Commissioners for a response. He recommends extending another month or six weeks with the public hearing in order to gather more information and get answers.

Neil asked if the assessment proposal can be written during this process so that the intensions of the bond attorney are known and what properties are included or excluded. Christian said no because the proposal would be based on how the commissioners vote. If it's going to be adopted it will be simply written and will not have a lot of

detail. Neil clarified that if properties are not listed then they would be excluded. Neil asked Eric for clarification. Christian said the Lowdermilk property has been excluded; it is not part of the protest because it is not included in the subdivision.

Christian said the bigger questions are: is the engineering proposal going to be sufficient, are the numbers okay and do we have a firm commitment from the property owners for the necessary width, do we have a survey that matches where the road is and have we covered all of the gaps where additional property might need to be. Neil has a survey of the road, but it is not wide enough yet. Christian thinks our engineer needs time to review.

Eric Lyman, a home owner in the subdivision said when he purchased his property he did not realize the complexity of building a road. He assumed it would happen. He hopes the process doesn't keep them from having a good, dependable, safe road. He realizes that this is the best chance they have of getting a road. They continually place Band-Aids on the road and feels this would be a great long term solution. He is in favor of the road.

Gina Gagon commented on the question of whether the homeowners would deed over the necessary property to allow for the road. She said she is one of those homeowners and her answer is yes, they would deed over the necessary acreage to allow for the road to be placed correctly. The conversation continued on how this would affect her property. Commissioner Hopes clarified that the paved surface is only twenty-four feet wide; the additional width is to provide for ditches, drainage and snow storage which is why they require fifty feet.

Gina said when they were looking to build, they were approached by Duane Wise about easements with the intent to sign over the needed acreage to make the road within the legal description.

Gina asked Christian what format would be sufficient to confirm that the homeowners are willing to give up the needed acreage for the road. Christian said ideally he would like deeds to the Home Owners Association or a signed contract with the HOA saying that upon approval of this assessment area these would be given.

Commissioner Potter thinks that the problem is the cart before the horse. How do we know what land is going to be affected until the road is actually designed. It needs to be surveyed indicating the amount of property that needs to be deeded over. It's a Catch 22, the County needs that information to move forward but is the HOA prepared to provide these kinds of specifications. This is hard to answer without the engineering part being done but it is also not fair for the HOA to spend money if it's not going to happen. What if there are enough dissenting members of the HOA that would kill the project anyway.

Gina asked about a conclusion by the next meeting. Commissioner Potter said they need to solve the problems before the County Commission can take action. She asked if Nielson Construction needs to issue a written report that includes all the material discussed today and how far in advance of the public hearing should it be given to the Commissioner. She asked for guidance.

Commissioner Potter explained that the agenda is closed the Friday before the next meeting. So a normal process would require that the engineering be done in order for the County to accept the road.

Gina asked if the commissioners would accept a cost estimate without the full engineering in order to approve the bond. They do understand that the engineering needs to be done before construction is begun but would the Commission accept a cost estimate that does not include finalized engineering to base their decision.

Commissioner Mellor said it depends on the comments received from the engineer after reviewing the information received today.

Curtis said the information received today would not be conclusive and would not give him his final decision. More work and testing would need to be done. Commissioner Hopes said if we accept the work and move forward, we would need to reserve the right to ask for more engineering or work to satisfy the needs of the County.

Gina said the real issue is the amount of the bond. Do we have a solid enough estimate to bond for the right amount and if the estimate changes, how does that affect the bond cap and are the homeowners willing to cover the increase. Christian said if it goes up, the process would have to start again.

Commissioner Potter read from the last meeting's minutes what Eric said about this. It states that if the estimate goes over by 20% then it would have to be re heard but if it were 5% or 10% then it would probably be okay. Neil said in a previous meeting that everyone is comfortable with the current proposed amount, if it goes up then the

project will not be done. So the HOA is semi-controlling this and because of the way hearings go, the Commission is limited by statute on what can be done.

Commissioner Hopes asked Blake how long the bid is good for. He doesn't perceive the bid to go up by next year and you can't pave during the winter. Blake said they would have to look at it at the time; they have to bid at current market prices. Current prices are not expected to increase. Commissioner Hopes said that by spring or fall of next year this quote should remain the same. Blake said yes based on the scope of work presented.

Christian said that if the special assessment was approved then the work would still have to go out to bid. We still have to rely on the estimate and how long it is good for.

Gina reminded everyone that the estimate is taking into consideration that the road is part way built. It can't be compared to Nine Mile, this is for finishing work. Much of the work has already been done.

Neil reiterated that the center line is pretty perfect all the way through; the ground subgrade does not have to be changed. In an ideal situation, it would be a seven foot dedication from the adjoining properties. There are variances with PRWID and coming up the hill. From the beginning to end there is appropriate width with only a few places where an adjustment would have to be made. They will work on that. Christian asked that the homeowners submit a letter of intent indicating that they are willing to provide the additional property. We do need to know where those areas are, before it becomes a legal question. Commissioner Potter said we now know that we have to accommodate the water line and the road may need to be adjusted.

Curtis said that PRWID anticipates that there would not be asphalt on their lines except where it cuts across the road. Blue Stakes may want to be called and have it staked and compare this to the survey.

Eric Lyman asked about the percentage of engineering completed that Curtis would be comfortable with before the project is put out to bid. Curtis said that you have to get to a certain level where the issues have been tackled. He explained the County process. Typically there is a 100% engineering design before it goes out to bid.

Commissioner Potter made a motion to leave the public hearing open and schedule a continuation for Wednesday January 6, 2016. At that time a sixty day objection period will begin and at the end of the sixty days have adequate information gathered for both sides for further exploration and comments. Commissioner Hopes seconded. Motion carried.

15) Property Tax Appeal – Suzann Withers

Suzann Withers said this is regarding property she inherited in Helper. The most recent tax notice dropped the value from \$24,580 to \$2,580, this occurred at the same time she received an offer on the property. She appealed to the Board of Equalization and was told that past year payments cannot be refunded. After the BOE meeting, she requested records from the auditor's office and got tax records back to 1968 when her mother first inherited the property. The past tax records seem to be arbitrary even when acreage was sold off and reduced. She is appealing the last five years of taxes paid. The overage she feels they have paid is \$1,507.89. This is not a huge amount but she feels it is the principal. She said it doesn't appear that the people knew what they were doing before now. When she received this notice the valuation had dropped 90%. She said she had a realtor go and do an appraisal for her because she had thoughts to retire here on the property. The realtor looked at this parcel and said he would be surprised if she could get the \$2,580 out of it because it has no water rights, it's in a flood zone and it's completely land locked. She was told that she needed to come to this Commission Meeting today to prove that there had not been any improvements to cause the difference between 2010 when the evaluation was done to 2015. She has now involved Channel 2's "Get Gephart". He was told what she needed to do. Aerial photos do not go back that far, she does have 2011 and 2013 photographs. Her property is a tiny 1.29 acre triangle and Mountain States Investment Homes owns the property surrounding it. There are no easements to access it and the one side is the Price River. There have been no improvements. Looking at the records for the last 40 years, they all say no improvements. The last five years has been the same 1.29 triangle with the same valuation of \$24,580 with the drop to \$2,580 in 2015.

Commissioner Potter questioned having a real state agency do an appraisal; real estate agents do not do appraisals, appraisers do appraisals. He asked if she got a broker price opinion or did she pay for an appraisal. Suzann said she did not have an official appraisal. Commissioner Potter asked about the property that was sold that left the 1.29 acres. When was it sold and who was the recipient of the sale of the other property, who owned the property when it was sold? Suzann said she recently sold the 1.29 acres last week. Commissioner Potter asked when the property was divided that left it a land locked piece of property, who was advising her mother and why

an easement wasn't left on the property for access, this would have been the time to look at the valuation and have it reevaluated by the County. Suzann said she didn't know. Suzann said they did not question the past tax notices until the most recent one showed such a drop, which raised a red flag. They had never even looked at the property until then.

County Attorney Christian Bryner explained that the statute that allows you to come in and make this appeal to the Commissioners states that you have to show that the property was erroneously or illegally assessed. Additionally there is another statute that says you are to bring that appeal each year or you have to make the appeal within the year that you are appealing. For each of the years from 2010, 2011, 2012, 2013 and 2014 if you were going to appeal based on an erroneous assessment you have to make the appeal by March 31st of the following year. This was not done by the appellate or her mother within that time period. There is a statute of limitations that bars the commission from considering this request. Had she brought this to the County Commissioners each of those years or one of those years, they could have heard it then. The problem is that the information has to show that the property was erroneously assessed, an erroneous assessment that was clear from the information held within the file of the county assessor. If the acreage was incorrect within the file then that would be an erroneous assessment. When your mother sold that property in 2009 and changed the size of that parcel, it doesn't automatically trigger a requirement to the county assessor to go out and reassess the property. The assessor assumes that it keeps its same nature and reduces the amount of acreage that is being assessed. The County Assessor did that, she reassessed that property based on the amount of acreage that was there at that time. The acreage was correct. The appellant is asking to put upon the county a burden that the county does not carry which is to say if the nature of the property changes and it can't be used the same way and the configuration is different it is up to the county assessor to discover. The County assessor only has to do its regularly scheduled reappraisal of property every five years by statute. When the reappraisal was done then it was caught that the nature of the property was different but it was not an error of the county assessor because they then changed the size of the parcel to what was there. The burden on the tax payer at that point was then to go to the Board of Equalization and say, now this property is of a different nature and it is not usable. This is not an error on the county assessor's part, because it did not get changed when the property pieces were sold off by the property owner. He recommends that the County Commissioners do not grant this request for two reasons; because an appeal was not made each year within the applicable time period and because the problem that exists was not actually an error as defined by statute.

Suzann said she understands the purpose of the Board of Equalization to look at the current year but she had no way to know until the last tax notice. Christian explained that the County is not required to go look at property every time it has been resold. If the County does not do the reevaluation when scheduled, then the law says to go by the most recent assessment. The County was not in error and the County did go back and reappraise the property during its regularly scheduled appraisal. Suzann said she asked, based on the standards of practice, for an explanation of the scope, timing, physical inspection and formula used to cause the change.

Christian explained that it was determined in 2014 that the lot was not a buildable lot during the regularly scheduled reappraisal. A reappraisal was not done in 2010, 2011, 2012 or 2013 because it was not required. Suzann said the standard of practice requires an appraisal every five years. Christian said that it as aspirational goal. At times a county has so many properties to appraise that it is not done every five years. Because this is not met, it does not entitle you to relief.

Commissioner Mellor said we have heard a lot of information tonight and with what Christian has provided, it doesn't appear that the Commission is obligated to remunerate Suzann for past taxes simply due to reassessments and timing.

Commissioner Potter said he has spent time researching this issue. The biggest problem is the lapse of time that has gone on. The statute of limitation has expired. Once it was reappraised it was changed. It is too bad that this did not take place sooner on the property owner's part. But as a commission, it does not have the ability to refund the tax. Commissioner Potter made a motion to deny this request because the statute of limitation has run out.

Suzann asked about going to the next level, to the State Tax Commission, and filing with the Clerk/Auditor's office. Seth explained that an appeal to the State Tax Commission would be based off of the appeal for 2015 against the value appraised. The Tax Commission would appeal the value of \$2,580 but the county legislative body is the three commissioners and if they were going to give you a refund of prior taxes, which is what you are asking for, this is where it would need to be done. Attorney Bryner explained that this body cannot give her legal advice of what to do next.

Commissioner Hopes seconded the motion. Motion carried.

She asked about a State appeal form and Seth said one can be sent to her. Lori was requested to leave the meeting and get her a form from the Clerk /Auditors office. A form was given to her right then.

16) Review and possible approval of a Resolution Approving Submission of Application to the State of Utah Designating Commercial and Industrial Zones as Recycling Market Development Zones – Tami Ursenbach

Tami said this comes up every five years and needs to be completed by the end of the year. The recycle zone gives tax credit to businesses that supply or use recycled products. This is already in place and is a five year renewal. This is for everyone in the County except Price City.

Commissioner Potter made a motion to approve the renewal for the Recycling Market Development Zone with the correct Resolution number (Resolution #2015-07). Commissioner Hopes seconded. Motion carried.

17) Review and possible approval of a Resolution to the State of Utah for Renewal of the Enterprise Zone Designation for County Commercial and Industrial Zones – Tami Ursenbach

Tami said this is also for a five year renewal. This gives businesses that are not retail, construction or a public utility a chance for a variety of tax credits when they hire new employees or for employers who have health care in place or for the rehabilitation of buildings for new or preexisting businesses.

This provides an opportunity to attract certain kinds of businesses, relocate businesses to here or to allow businesses to expand.

Commissioner Potter made a motion to approve the renewal of the Enterprise Zone Designation with the appropriate resolution number (Resolution #2015-08). Commissioner Hopes seconded. Motion carried.

18) Review and Approval of Departmental Reports

Commissioner Potter a motion to adjourn, Commissioner Hopes seconded. Motion carried.

The meeting adjourned at 7:01 p.m.

ATTEST:

 
Seth Oveson, County Clerk/Auditor


Jake Mellor, Chairman